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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/707,210 | 11/26/2003 | Lisa Semeniuk | 50709-4 | 1209 |
| 23971 | 7590 | 08/17/2004 | EXAMINER | |
| BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA | | | | PATEL, NIHIL B |
| | | ART UNIT | | PAPER NUMBER |
| | | 3743 | | |
| DATE MAILED: 08/17/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|--|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/707,210 | SEMENIUK, LISA |
| Period for Reply | Examiner | Art Unit |
| | Nihir Patel | 3743 |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. | | |
| <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> | | |
| Status | | |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>11.26.2003</u> . | | |
| 2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final. | | |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. | | |
| Disposition of Claims | | |
| 4) <input type="checkbox"/> Claim(s) _____ is/are pending in the application. | | |
| 4a) Of the above claim(s) _____ is/are withdrawn from consideration. | | |
| 5) <input type="checkbox"/> Claim(s) _____ is/are allowed. | | |
| 6) <input checked="" type="checkbox"/> Claim(s) <u>1-31</u> is/are rejected. | | |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. | | |
| 8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement. | | |
| Application Papers | | |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner. | | |
| 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. | | |
| Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). | | |
| Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). | | |
| 11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. | | |
| Priority under 35 U.S.C. § 119 | | |
| 12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). | | |
| a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: | | |
| 1. <input type="checkbox"/> Certified copies of the priority documents have been received. | | |
| 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. | | |
| 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). | | |
| * See the attached detailed Office action for a list of the certified copies not received. | | |
| Attachment(s) | | |
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | | |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | | |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | | |
| 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____. | | |
| 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) | | |
| 6) <input type="checkbox"/> Other: _____. | | |

DETAILED ACTION

Drawings

The drawings are objected to because there is two figure 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 10-12, 14, 19-21, 23, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Byram US Patent No. 5,464,010. Referring to claim 1, Byram discloses a convenient drop-down respirator harness structure and method of use that comprises the steps of securing the oxygen mask over a respiratory outlet (see figures 5 and 6) using a strap that engages the crown of a head (see figures 5 and 6) with a crown member 30 that is spaced above both ears of the head (see figure 6), and attaches to the oxygen mask via two side straps 14 (see figures 5 and 6) that each along one side of the head between a junction 23 on the crown member (see figures 5 and 6) and an attachment point on the oxygen mask (see figures 5 and 6), along a path that is spaced in front of the ear on that one side of the head (see figures 5 and 6).

Referring to claim 2, Byram discloses an apparatus wherein the crown member comprises an upper crown strap 25 and a lower crown strap 27 (see figures 5 and 6).

Referring to claim 3, Byram discloses an apparatus wherein the strap 14 comprises a resilient material (see column 2 lines 55 to 65).

Referring to claim 5, Byram discloses an apparatus wherein the resilient material is an elastic material (see column 2 lines 55 to 65).

Referring to claim 10, Byram discloses a convenient drop-down respirator harness structure and method of use that comprises providing a strap that comprises: a crown member 30 that engages the crown of the head of the person at a selected distance above both ears of the person, and a pair of side straps 14, each side strap having a first end and a second end, the first end being attached to the crown member 30 (see figures 5 and 6) at the junction 23 (see figures 5 and 6), connecting the second end of each side strap to each of two attachment points on the oxygen mask (see figures 5 and 6), and using the strap to secure the oxygen mask over the

respiratory outlet, thereby causing each side strap to extend between the junction 23 and the attachment point along a path that is spaced in front of each ear (see figures 5 and 6).

Referring to claim 11, Byram discloses an apparatus wherein the crown member 30 comprises an upper crown member 25 and a lower crown member 27 (see figures 5 and 6).

Referring to claim 12, Byram discloses an apparatus wherein the strap 14 comprises a resilient material (see column 2 lines 55 to 65).

Referring to claim 14, Byram discloses an apparatus wherein the resilient material is an elastic material (see column 2 lines 55 to 65).

Referring to claim 19, Byram discloses a convenient drop-down respirator harness structure and method of use that comprises an oxygen mask having an attachment point on either side of the mask (see figures 5 and 6), and a strap having a crown member 30 engageable on the crown of the head of the person at a selected distance above both ears of the person, and two side straps 14 each having a first end and a second end, each first end being attached to the crown member 30 at opposed junction 23 (see figures 5 and 5), joined together by connecting each attachment point to the second end of one of the side straps, and characterized in that each side strap is spaced in front of an ear of the person when the mask and strap are in use (see figures 5 and 6).

Referring to claim 20, Byram discloses an apparatus wherein the crown member 30 comprises an upper strap 25 and a lower strap 27 (see figures 5 and 6).

Referring to claim 21, Byram discloses an apparatus wherein the strap 14 comprises a resilient material (see column 2 lines 55 to 65).

Referring to claim 23, Byram discloses an apparatus wherein the strap is made of an elastic material (see column 2 lines 55 to 65).

Referring to claim 28, Byram discloses a convenient drop-down respirator harness structure and method of use that comprises an oxygen mask having an attachment point on either side of the mask (see figures 5 and 6), and a strap with a crown member 30 comprising an upper crown strap 25, a lower crown strap 27 and two opposed junctions 23 (see figures 5 and 6); a side strap 14 extending from each junction 23 (see figures 5 and 6) joined together by connecting each attachment point to the second end of one of the side straps, and characterized in that the crown member engages the crown above the ear, and each side strap 14 is spaced in front of an ear of the person, when the mask and strap are in use (see figures 5 and 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 16, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram US Patent No. 5,464,010 in view of Darrow US Patent No. 1,323,217. Referring to claims 7, 25, and 29, Byram discloses the applicant's invention as claimed with the exception of providing a transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown strap.

Darrow discloses a ventilating mask that does provide transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown strap (se

figure 1). Therefore it would be obvious to modify Byram's invention by providing transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown.

Claims 4, 6, 13, 15, 22, 24, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram US Patent No. 5,464,010 in view of Norfleet US Patent No. 6,418,929. Referring to claims 4, 6, 13, 15, 22, 24, and 30 Byram discloses the applicant's invention as claimed with the exception of providing upper crown strap and lower crown strap that comprises resilient (elastic) material.

Norfleet discloses an infant oxygen mask that does provide upper crown strap and lower crown strap that comprises resilient (elastic) material (see figure 3). Therefore it would be obvious to modify Byram's invention by providing upper crown strap and lower crown strap that comprises resilient (elastic) material in order to make it easier to put on and take off the mask.

Claims 8, 9, 17, 18, 26, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram US Patent No. 5,464,010 in view of Darrow US Patent No. 1,323,217 as applied to claims 7, 16, 25, and 29 above, and further in view of Cruickshank Patent No. GB 2 212 725 A. Referring to claims 8, 9, 17, 18, 26, 27, and 31, Byram and Darrow discloses the applicant's invention as claimed with the exception of providing transverse (crown strap) that comprises resilient (elastic) material.

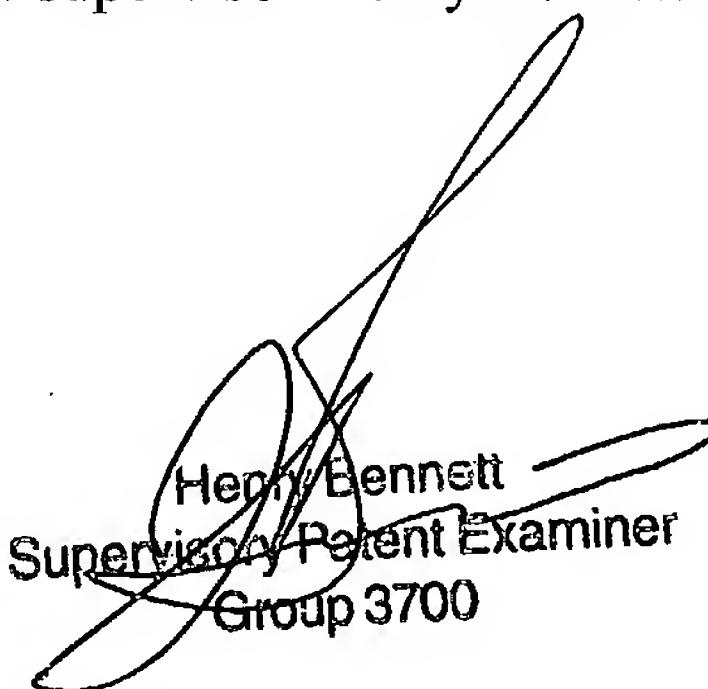
Cruickshank discloses a breathing apparatus that does provide transverse (crown strap) 3 (see figure 1) that comprises resilient (elastic) material. Therefore it would be obvious to modify Byram and Darrow inventions by providing transverse (crown strap) that comprises resilient (elastic) material in order to make it easier to put on and take off the mask.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP
August 13th, 2004


Henry Bennett
Supervisory Patent Examiner
Group 3700